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EX PARTE OR LATE FILED

OCT 30 2000

**From:** <FJDMCC@aol.com>**To:** <rpitofsky@fcc.gov>, <santhony@fcc.gov>, <mthompson@fcc.gov>, FEDERAL COMMUNICATIONS COMMISSION  
<oswindle@fcc.gov>, <tleary@fcc.gov>, <rparker@fcc.gov>, <bkennard@fcc.gov>, <sness@fcc.gov>, OFFICE OF THE SECRETARY  
<hfurchtg@fcc.gov>, <mpowell@fcc.gov>, <gtristan@fcc.gov>**Date:** Mon, Oct 9, 2000 2:50 PM**Subject:** NO TO AOL-TIME WARNER MERGER!!

I vote NO to the AOL-TIME WARNER merger. I believe  
this merger will create a tyrannical monopoly that will  
seek to control the internet, television, cable, and more!!  
A monopoly that will ultimately destroy all consumer  
choice!

Please vote NO!

Thank you,

Frank J. De Smidt  
P.O. Box 360342  
Milpitas, CA 95036-0342  
408-263-1115

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List A B C D E

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**From:** <Tedmarad@aol.com>  
**To:** <rparker@fcc.gov>, <bkennard@fcc.gov>, <sness@fcc.gov>, <hfurchtg@fcc.gov>, <mpowell@fcc.gov>, <gtristan@fcc.gov>  
**Date:** Mon, Oct 9, 2000 4:06 PM  
**Subject:** (no subject)

Ladies and Gentlemen,

DO NOT, for any reason, allow the Time Warner/AOL merger! While I enjoy and use AOL, I am all too well aware of their restrictive and imperialistic concepts in their method of operation.

Free market or free anything is censored on AOL. The proposed free cable access to other ISP's that AOL promises if the merger goes through will not happen. I don't have a crystal ball, but I do have years of experience in dealing with this company.

Microsoft, with all their faults, has been a boon to this country and the world at large. AOL/Time Warner will be the opposite. The ISP market will be virtually destroyed by this merger. AOL's sole goal is Internet control that will make Genghis Khan look like a benevolent real estate developer. It is difficult to explain that in short communications, but if you have been using and watching this service for a couple of years, you would understand the truth of it.

I will continue to use AOL until something better comes along, and I will continue to try and use other ISP's as well. But I would hope you restrain their power now while you can. They are already too big and powerful for a free market and free competition. This is much more critical to the future of the nation than the Microsoft case!

Al Martin  
Iselin, NJ

**RECEIVED****OCT 30 2000**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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UNABCODE

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**From:** <Readycare@aol.com>  
**To:** <rpitofsky@ftc.gov>, <santhony@ftc.gov>, <mthompson@ftc.gov>, <oswindle@ftc.gov>, <tleary@ftc.gov>, <rparker@ftc.gov>, <bkennard@fcc.gov>, <sness@fcc.gov>, <hfurchtg@fcc.gov>, <mpowell@fcc.gov>, <gtristan@fcc.gov>  
**Date:** Mon, Oct 9, 2000 1:44 PM  
**Subject:** Please vote against AOL-Time Warner merger!

**RECEIVED****OCT 30 2000**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

I received the latest email from an AOL watch-dog group and what I read makes me nervous about the planned impending merger of America Online and Time Warner. With so much control over media, it won't be long until Big Brother becomes more reality than we'd like.

As a concerned citizen (and an AOL member), I implore you to vote \*against\* this proposed merger in an effort to allow continued free market expansion of media. Please take a look at the enclosed information. Thank you for your time and consideration.

Respectfully submitted,

Gary Price  
 14026 E. Radcliff Cir.  
 Aurora, CO 80015

### Scamming the FTC

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Can AOL be trusted? Maybe not, according to recent information. Time-Warner owns valuable cable television lines which in the future can also offer high-speed internet access. In a proposed merger with Time-Warner, AOL would acquire those cable lines, and with them the ability to prevent other internet service from offering high speeds. Government regulators expressed concerned, but AOL promised they'd allow competitors to use the cable lines. However, the Washington Post reported Friday that nearly forty internet services in Texas found there was a catch. The Texas companies were told they'd be allowed to offer their services on the cable lines, but only if they forfeited three-quarters of their subscription fees to Time-Warner!

<http://www.washingtonpost.com/wp-dyn/articles/A28372-2000Oct6.html>  
<http://cbs.marketwatch.com/archive/20001008/news/current/twx.htm>  
[http://dailynews.yahoo.com/h/nm/20001008/bs/timewarner\\_dc\\_3.html](http://dailynews.yahoo.com/h/nm/20001008/bs/timewarner_dc_3.html)

Even more surprises lurked. Besides an additional \$50,000 up-front fee -- which meant small services couldn't afford a place on the lines -- Time-Warner also demanded veto power over what appeared on the service's start page! An attorney told the Washington Post the arrangement wasn't open access, it was "a death sentence." And they're not the only ones. Last week Earthlink complained they'd been hit with similar "unreasonable and discriminatory" conditions. Jeff Chester, executive director at the Center for Media Education, told CBS MarketWatch AOL had revealed their true colors. "It's been known for some time that AOL-Time Warner's supposed voluntary commitment to competition was meaningless. Now, it's

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clear, it's out in the open, it's in front of policymakers, that the so-called commitment to open access means that competitors are reduced to vassals."

<http://cbs.marketwatch.com/archive/20001002/news/current/media.htx>

The Consumers Federation of America warned government regulators about AOL in July. "The frailty of voluntary open access was made clear when AOL was unwilling to allow its promises to be turned into obligations, as the City of Los Angeles tried to do. Exclusionary contracts are still in place."

<http://www.consumersunion.org/telecom/cooperdc800.htm>

Other internet services are concerned. "Without some sort of verifiable guarantees for open access as the ISP industry sees it, we would oppose this merger," says Kurt Rahn, Earthlink's Director of Corporate Communications. "And we'd do what we felt necessary to get those provisions included as part of the merger," he told AOL Watch last week. "That's not to say that we oppose the merger outright, but we do feel that this is where you draw the line in the sand. If it doesn't happen here..." He paused. "It's gotta happen here."

"This is where we put the flag in the sand, and fight kicking and screaming."

He adds that AOL's demands went even further. "In addition to problems with the revenue split itself AOL Time-Warner wants to set the price of our service. I can't think of another instance where a competitor sets the price of another service." Friday a Walt Disney lawyer bluntly told Congressmen that AOL's "stated strategy" was to "monopolize the field for itself." Earthlink's Rahn says the negotiators for cable access have remained firm on impossible conditions. "Not only can't you be profitable, it's not even really a break-even proposition." This paints an ominous picture for services in the future. "If the #2 ISP, with almost 5 million people, has a problem with this, it's very unlikely that people who are even smaller than us with even less negotiating leverage would get anywhere either."

<http://yahoo.cnet.com/news/0-1005-200-2948607.html>

<http://www.guardian.co.uk/newmedia/story/0,3605,346590,00.html>

AOL already has a great deal of power. Recently it was reported that WorldCom informed their customers they'd lose their internet service unless they agreed to switch to AOL, and a Time-Warner chairman recently hinted that AOL might someday offer high-speed DSL connections as well.

[http://www.zdii.com/industry\\_list.asp?mode=news&doc\\_id=ZD2617919](http://www.zdii.com/industry_list.asp?mode=news&doc_id=ZD2617919)

But the biggest fight isn't over the cable lines; it's over the cable box on top of the television. The boxes will receive the next generation of services, yet AOL has carefully eliminated it from their promises. Earthlink's Rahn remembers that when the FCC asked AOL about set-top boxes, "AOL's answer was that set-top boxes weren't considered in their

Memorandum of Understanding." It's a crucial element for services of the future, and AOL has already purchased the domain ShopAOLTV.com. "[W]hen you hear about AOL's supposedly innocent iTV experiment," one Ziff-Davis columnist warned, "just remember that this is AOL's beachhead -- the point from which it intends to invade your living room and lock up you and your family." He concludes with the question: "Are you going to let AOL take over your television?"

<http://www.zdnet.com/anchordesk/stories/story/0,10738,2589806,00.html>

Most users don't want AOL television offerings, according to one online poll. Asked "When will you get AOLTV?" 95% of the respondents answered: "As soon as I'm done laughing at such a ridiculous question--NEVER!" Real-world statistics echo the sentiment. Fewer than 50,000 subscribers have signed-up for AOL's high-speed offerings, according to a recent article in the San Jose Mercury News. But if they didn't have a choice? Last month one Congressman questioned whether AOL's promise that there would be other services competing with them would prove real, or only offer consumers "illusory choice."

<http://cgi.zdnet.com/zdpoll/question.html?pollid=18343&action=a>  
[http://www.thestreet.com/\\_yahoo/tech/internet/1100651.html](http://www.thestreet.com/_yahoo/tech/internet/1100651.html)

One AOL Watch reader said this fight gives new meaning to a recent call from an AOL telemarketer. "First they force their way into my home by purchasing my cable company -- now they are calling my house too." AOL has 24 million home phone numbers, and they've already started using them for free advertising. One Californian has discovered a way to strike back. At StopJunkCalls.com, he reports that last month AOL agreed to pay \$5000 in fines for over 15 unsolicited phone calls. "They paid it...kicking and screaming," Robert Arkow told AOL Watch -- and "they never even attempted to apologize!" He believes it's the largest judgment ever in California history against a telemarketer -- and he didn't even hire a lawyer!

<http://www.stopjunkcalls.com/>  
<http://www.usatoday.com/life/cyber/tech/jk080300.htm>

A recent development could spell even more legal problems for AOL. A little-noticed clause in AOL's user agreement requires users to file any lawsuits against them in the state of Virginia, but last month a California judge ruled this was "unfair and unreasonable."

<http://www.cnetinvestor.com/yahoonews/newsitem-yahoo.asp?SYMBOL=N885856>

Users have already found that AOL's call centers don't serve their customers effectively. AOL promised 44 state attorneys general they'd streamline cancellation procedures; instead, they instituted a policy of hanging up on customers rather than connect them to a live operator during busy periods! The practice was exposed by a series of articles in the Boston Herald.

[http://ispworld.com/bw/jul/Welcome\\_AOL\\_Hell.htm](http://ispworld.com/bw/jul/Welcome_AOL_Hell.htm)  
<http://www.BusinessToday.com/techpages/buy03142000.htm>  
<http://www.bostonherald.com/bostonherald/lonw/aol03152000.htm>

[http://www.bostonherald.com/news/local\\_regional/buy06122000.htm](http://www.bostonherald.com/news/local_regional/buy06122000.htm)

But the Herald uncovered an even more damning accusation. "Customers calling to cancel memberships with AOL are frequently met with telephone representatives who use deceptive tactics or blatantly lie to keep them from leaving the Internet giant, a former employee alleged." Reporter Robin Washington cited scripts provided by his source, as well as a California class action attorney who argues that AOL knowingly allows the misrepresentations. When read the script, a spokesperson for the Iowa Attorney General called one line "an outright lie."

[http://www.bostonherald.com/news/local\\_regional/buy07032000.htm](http://www.bostonherald.com/news/local_regional/buy07032000.htm)

Instead of encouraging unbiased cancellation, AOL pays their employees a bonus if they dissuade callers from cancelling. The Herald's story prompted angry users to come forward with their own details on dishonest AOL answers. "I greatly appreciated your article," one reader wrote on the paper's message board, "having been told several days ago by an AOL representative when I tried to cancel my account that AOL would refuse to cancel the account unless I agreed to submit to a 5-10 minute, highly detailed exit interview. When I refused, for both privacy and time constraint reasons, the representative refused to cancel my account and I was forced to hang up with my account active." Another poster claimed to have been victimized by AOL's policy in another way. "I worked for AOL for 3 months. I was fired because I did not keep a 50% saves rate for account cancellation." It's been suggested that this is one reason why so many subscribers report their AOL billing continues after they've cancelled their accounts: AOL employees lying about the number of users they'd convinced to stay. One poster on the message board identified themselves as an AOL employee, then argued that "numerous people" who had lied were caught and fired.

<http://www.bostonherald.com/guestbook/rwashington/guestbook.html>

<http://www.aolwatch.org/list/0091.html>

A controller at a South Carolina university, already upset AOL wouldn't let him cancel online, says he experienced both problems. "Upon contacting AOL by phone, and giving termination instructions, they blatantly try to manipulate you into staying with AOL" -- and after clearly instructing them to close his account, "AOL continued to bill me and did not terminate my service." Dozens of former subscribers have contacted AOL watch complaining they'd been billed after cancelling their accounts, and the billing problems may be much larger. One credit card company calculates hundreds of thousands of credit card transactions may have been processed without authorization. According to Reuters, a lawsuit filed Monday charged AOL with breach of contract, fraudulent misrepresentation, and even a pattern of "racketeering activity...for the purpose of obtaining unauthorized monthly fee payments."

<http://biz.yahoo.com/rf/001002/n02313008.html>

The same day a 1997 case over unfair AOL charges came to the Supreme Court -- but it ultimately offered the another sign that protections for subscribers may be lacking. The court refused to review a federal judge's

decision that services like AOL aren't subject to a 1934 Act protecting their privacy rights. For one CompuServe user, the lesson is clear. "I can't imagine the customer service nightmare that the merger would create."

<http://wired.com/news/business/0,1367,39204,00.html>  
<http://www.jameskeyser.com/csaol.htm>

This policy of putting AOL's interests first apparently even extends to other people's phone numbers. "Two years ago, I began to receive many hang-up phone calls to one of my two business lines," remembers a New Jersey technology vendor. "Upon more research, I discovered that the hang-ups were AOL customers trying to get online." And in Virginia the same thing was happening to James Donovan's design and construction firm. "Two years ago we started receiving phone calls with no noise after picking up." Using a combination of their carrier's call-return feature and a reverse phone-number search, he was also able to determine that the calls were coming from AOL's subscribers. And after doing some further research, including a call to the Florida Utilities Commission, Donovan told AOL Watch that "It turns out others in Florida are having the same problem!"

Donovan says AOL told him they weren't responsible for this problem. His conclusion? "They lie." Last week he told AOL Watch that "We feel we have lost at least \$5000 in phone bills and time spent on the matter, and at least a fair amount for the aggravation." But faced with such a powerful corporation, he felt he had to give up. "We did think of taking them to court, but we don't have the funds to retain an attorney and at this point have, as they hoped, given up and are planning on dropping the number to cease the calls." The New Jersey business owner resorted to the same strategy. "I changed the number.

"But occasionally, some AOL customer will dial the number manually and call my new number..."

Even taking AOL to court doesn't guarantee a response. Last Monday when a judge's assistant phoned AOL's lawyer to remind him of a court date that day, "He told her he did not remember her calling him to inform him that the pre-trial hearing was set..." plaintiff Erroll Trobee told AOL Watch, "and he had a full schedule and could not make it over." Trobee says AOL still isn't complying with a settlement agreed to for a breach-of-contract suit from 1993. "In an effort to speed this process up, the Judge, who presides over a circuit in Arkansas, moved the hearing to an adjoining county so it would not be another two months before it could be heard!"

AOL's legal troubles don't end there. AOL has even run afoul of the national advertising council in Brazil. Though 84% of Brazilians get their internet connectivity from a service called UOL, AOL ran ads which erroneously implied AOL was more popular.

<http://www.zdnet.com/zdnn/stories/news/0,4586,2620334,00.html>

AOL can be held accountable for their actions, according to one Oklahoma customer who was billed for a product they didn't order. She complained

to Virginia's office of consumer affairs, and "Within a week, they credited my account back!" Now she's continuing her fight -- on principle. "I am still going through with the complaint against them because AOL shop Direct bullied me."

Users wonder why elected officials don't offer their assistance. One AOL Watch reader asked in June: "Why is AOL not being investigated by the government as a monopoly?" Another also blamed lax regulatory agencies. "I hate AOL. I tell all my friends not to use AOL. But it's kind of hard to avoid AOL when the FCC lets it run around playing PacMan with all of its' competitors!"

<http://www.bostonherald.com/guestbook/rwashington/guestbook.html>

But if AOL acquires Time-Warner, they'll want to do more than control the start pages of other ISP's. Today already AOL actively discourages their content partners from promoting any of AOL's competitors -- a fact which AOL conceded to European officials investigating the proposed merger, according to the Wall Street Journal. Tuesday Bloomberg news reported one opponent of the merger said AOL even wanted to interfere with what users saw on news sites. He told a Washington audience that during contract negotiations, AOL had asked ABC News to remove links to non-AOL web sites. If more than one out of every four visitors chose something other than AOL's content, AOL had demanded the right to cancel the entire contract!

<http://yahoo.cnet.com/news/0-1005-200-2926037.html>

AOL also selects who's allowed to send e-mail e-mail to their subscribers. The owner of a collectors shop tells AOL Watch they had their account revoked after e-mailing customers. (And they also weren't immune from other AOL problems. After cancelling their service, "In the first week we received SIX calls to re-enlist...") It may be a harbinger of the world to come. A C|Net columnist noted that in April, AOL blocked some web sites with their family filters, but not others. Children could view web pages for the Republican party's site, but not the Democrats', and they could pull up the web sites of conservative third-party candidates, but not Ralph Nader's green party. Sites promoting gun ownership were also available, but not gun safety sites. The online world is headed to a future where AOL picks and chooses what users see. While AOL can argue they mis-configured their filters, the incident reminds users AOL can block any sites they choose. At one point, AOL even banned the Irish language, according to one web page, and one AOL subscriber even alleges that AOL has already begun changing the messages people leave on AOL message boards.

<http://www.news.com/Perspectives/Column/0,176,421,00.html>  
[http://inac.org/IrishPeople/top/01\\_09\\_99/010999language.html](http://inac.org/IrishPeople/top/01_09_99/010999language.html)

No one is safe, according to a AOL user subscribed to a mailing list of prayers and Bible scriptures. He told AOL Watch last month the list's operator announced that "AOL deleted his account because he was sending 'unsolicited junk email' to his subscribers." Attempting to advise AOL of their mistake only revealed a corporation that was giant, unresponsive, and error-prone. "Many of the members wrote to AOL, explaining that this



was an OPTIONAL mailing list," he told AOL Watch. "What we received in return was the following..."

Dear Member,

Thank you for reporting the Terms of Service violation. We rely on members like you to bring such breaches of conduct to our attention so we can keep America Online fun for all members....

The problem was eventually resolved, but it highlights AOL's ongoing practice of deciding which e-mail their users receive. Last September, AOL blocked approximately 26,000 subscribers from receiving the AOL Watch newsletter, and according to C|Net, AOL's policy appears to be blocking automatically all messages sent to a high number of subscribers. "Companies that send email...to AOL members said they usually have to inform AOL not to block their mailings. Otherwise, many of these bulk emails could be identified as unsolicited mail by AOL and blocked..."

<http://www.aolwatch.org/list/0103.html>  
<http://yahoo.cnet.com/news/0-1005-200-1923514.html>  
<http://yahoo.cnet.com/news/0-1005-200-2405152.html>

But AOL's own unsolicited e-mail can't be blocked. Subscribers now complain AOL itself inserts unsolicited messages into their mailboxes -- even if they've told AOL not to! One recipient responded with an angry e-mail to Steve Case, noting AOL also ignored his preferences when displaying pop-up advertisements. "Why set Marketing Preferences when AOL ignores them? Is AOL trying to drive away customers?" Keyword "Marketing Preferences" allows users to de-activate the ads, but after a year, as one user noted, "someone goes back and switches them to yes." (AOL discards the blocks after one year, requiring users to re-enter them.) "Come on, Steve," one Salon columnist complained, "how much money do you need?"

<http://www.salon.com/tech/log/1999/11/23/aol/index.html>

One user said the dilemma was clear: "I am paying them to advertise to me constantly." But it may get worse in the future. In August one Merrill Lynch analyst predicted AOL 6.0 would allow AOL to e-mail even more elaborate ads to subscribers. AOL has already registered the domain YouveGotBulkMail.com.

<http://news.cnet.com/news/0-1005-200-2528310.html>

When it comes to pop-up ads, "AOL takes the position that people want these advertisements," one attorney told an internet news site. "But we just don't think that's true." A Florida judge has approved his class action lawsuit against AOL because subscribers were billed for the time spent looking, CNN reported in June.

[http://www.internetnews.com/bus-news/article/0,,3\\_402581,00.html](http://www.internetnews.com/bus-news/article/0,,3_402581,00.html)  
<http://www.cnn.com/2000/LAW/06/25/aol.lawsuit/index.html>

Ironically, if the merger passes, CNN itself will be owned by AOL. In

fact, one online magazine warns the pending merger may already be influencing coverage of its potential damage. "[T]elevision news isn't about to do anything too critical as networks scurry for deals that will put them within the walled garden of AOL Time Warner..." Sean Elder wrote in a June article on Salon, "which is all the more reason that questions such as open access need to be addressed now."

"You may not hear about them on that fat pipe that's going to bring you your evening paper and favorite game show at the same time."

<http://www.salonmagazine.com/business/feature/2000/06/14/aol/index.html>

The New York Times noted that some Time-Warner company executives "have been told not to wait until the merger is complete to find ways to work with one another." Even though the U.S. government has yet to approve the merger, the paper reports that CNN news is already being displayed on AOL's Netcenter web site.

<http://www.nytimes.com/library/tech/00/06/biztech/articles/24online.html>

One film-maker told AOL Watch mergers could lead to a nightmare scenario -- where suddenly a TV anchor announces that "the federal government stated firmly that in no way does EOL's ownership of all utilities, entertainment and communications represent a monopoly of any kind." They used this vision for a short film, currently available online, depicting a user suffering at the hands of "EOL" -- version 9.0. One viewer said the film "has captured a world that will one day hold us hostage.."

[http://www.ifilm.com/films.taf?film\\_id=420297](http://www.ifilm.com/films.taf?film_id=420297)

Users may have already gotten a taste of this total control from AOL's stand-alone Instant Messenger product. Users find that after answering yes to the question "Are you sure you want to end your session," the software remains active in their system's tool bar. And users logging off from AOL still find AOL seizes control of their system to download software updates -- then, informs them that "AOL will now be restarted to allow you to sign on." "I am essentially told, 'Not so fast, Buddy'," one Washington Post columnist complained. "AOL then takes over my computer, telling me, 'The files you need are now being downloaded and installed,' and only when this process is complete does AOL return my computer to me."

"It swears it never extracts any info or peeks at my hard drive," Richard Cohen writes, but his article concludes, "I don't trust it one bit. It's not a charity, it's a business and some day it may sell what it knows." In fact, a March article in the Wall Street Journal reported AOL's policy "leaves it room to use some of its valuable data. Like many marketers, it sells names and addresses of subscribers to junk-mailers." The Journal also noted Time-Warner "has information on the reading and listening habits of the 65 million households that receive its books, magazines and CDs" -- and, that "somewhere within AOL's network is a computer containing information about where individuals have gone within its service."

<http://www.washingtonpost.com/wp-dyn/articles/A54075-2000Jul5.html>

In fact, a July class action lawsuit accused AOL's Netscape software of tracking which files users were downloading, then transmitting the information back to AOL. Acknowledging the concerns, AOL quickly removed the feature from their software. But AOL may have tipped their hand Monday, according to Reuters. As a Senate panel considered stopping services from gathering information about subscribers without their permission, AOL objected. AOL favored a no-protection default; customers who didn't want AOL to gather data about them would have to specifically request it.

[http://dailynews.yahoo.com/h/nm/20001003/tc/aol\\_privacy\\_dc\\_1.html](http://dailynews.yahoo.com/h/nm/20001003/tc/aol_privacy_dc_1.html)  
<http://www.thestandard.net/article/display/0,1151,16622,00.html>

Consumers may already be suffering. The Street reports estimates AOL already controls 90% of instant messaging, but another disadvantage of AOL's far-reaching control became apparent Friday when a technology failure interrupted AOL messaging. In a world where one company dominates a service, all users are affected by its technical problems -- and AOL has a long history of serious privacy and security breaches. Some users still remember the day in 1996 when the entire service went down for 19 hours, but now AOL's mis-steps reach a wider audience. Just months after AOL acquired ICQ, a Linux programmer discovered they could log onto any ICQ account without a password, and an August C|Net article reported hackers discovered a way to make AOL's ICQ messaging service e-mail them passwords for accounts. In February, one user's ICQ account was even held for ransom, and in August, AOL had to repair a security bug in their Netscape browser which allowed malicious webmasters to display what was on a user's hard drive!

<http://www.thestreet.com/tech/internet/1098825.html>  
<http://cbs.marketwatch.com/archive/20001006/news/current/aol.htx>  
<http://www.aolwatch.org/hubris.htm>  
<http://rootshell.com/archive-j457nxiqi3gq59dv/199808/icqpw.txt.html>  
<http://news.cnet.com/news/0-1005-200-2652485.html>  
<http://news.cnet.com/news/0-1005-200-1556634.html>  
<http://www.msnbc.com/news/442891.asp>

AOL has claimed that, rather than maintain a messaging monopoly, they're looking forward to the day when competing messaging companies offer the ability to reach AOL users. But one CBS MarketWatch columnist argued that AOL "could be pretending just long enough to eat the competition." AOL now insists that they need to work another year before they could even propose a standard -- "all of which could simply give AOL time to tighten its grip on the market," one finance web site noted, adding that after an FCC hearing, AOL's messaging president "referred questions on the subject to an AOL spokeswoman, who declined comment." Even the financial community doubts AOL's excuses. "AOL is foot-dragging about developing a standard because it wants to maintain its competitive advantage," one analyst to Upside. But one critic accused AOL of deliberately hobbling their competitors. "AOL's not controlling a standard. They're trying to keep companies from building any kind of standard at all." Critics told CBS MarketWatch AOL's ultimate plan was to create delays and prevent other companies from offering messaging to AOL users for as long as three years!

<http://cbs.marketwatch.com/archive/20000802/news/current/techwatch.htm>  
[http://www.upside.com/News/39affca00\\_yahoo.html](http://www.upside.com/News/39affca00_yahoo.html)  
[http://www.thestreet.com/\\_yahoo/tech/internet/1019673.html](http://www.thestreet.com/_yahoo/tech/internet/1019673.html)

Even FCC Commissioner Gloria Tristani told Reuters she was skeptical of AOL's guarantees. "To the extent that there are no firm deadlines or timetables for open access or offering instant messaging interoperability, no, I don't even know if you could call them promises...the statements that 'Yes, we will do this sometime in the future'..." Last month Prodigy's chief technology officer told C|NET that "they're clearly trying to monopolize the space."

<http://www.washingtonpost.com/wp-dyn/articles/A22776-2000Jun19.html>  
<http://news.cnet.com/news/0-1005-200-2668662.html>

AOL has argued that they can't let outside services message AOL customers because of technical and security problems. There's just one problem with that argument: AOL let's users of their ICQ service message AOL's AIM customers, according to the Wall Street Journal (9/26/00). "The fact that AOL has established virtual interoperability between its 138 million AIM and ICQ members completely undermines AOL's argument to government officials stressing the technical infeasibility of open communications," one AOL critic told Reuters. "AOL's attempts to keep this information hidden is just one more example of its dominance of the market and its attempts to keep its walls around its users." The Wall Street Journal noted that AOL "has an interest in remaining closed for as long as possible," and in the past, AOL has even implemented new technical barriers as soon as their rivals messaged AOL's customers! "I would be interested to see why they're doing the same thing they criticized everyone else for doing," an AOL critic told C|Net.

<http://news.cnet.com/news/0-1005-200-2871202.html>  
[http://www.thestreet.com/\\_yahoo/tech/internet/1097101.html](http://www.thestreet.com/_yahoo/tech/internet/1097101.html)  
[http://dailynews.yahoo.com/h/nm/20000926/wr/aol\\_instantmessaging\\_dc\\_1.html](http://dailynews.yahoo.com/h/nm/20000926/wr/aol_instantmessaging_dc_1.html)  
<http://www.freeim.org/>

AOL's earlier claims of security concerns infuriated one executive who described an alternate interpretation to the Wall Street Journal (9/22/00). "It's really like putting a wall around someone's office and saying, 'No it's not a jail, it's to make you safer.'" One sys-admin told AOL Watch that AOL also prevents users from making a secure connection to other networks with the IPSec security protocol. "I am totally baffled as to why AOL would not 'forward' IPSec nor POP3 protocols -- just forwarding, bypassing their internal network... What's their reasoning, other than control?"

AOL may be tightening their grip on their networks to try to lock up the wireless world of the future. Subscribers to wireless phone services have already jumped 24.4 in the last year, researchers told Smart Business magazine, and messaging is expected to be the "killer app," bringing customers to cellphones and handheld devices. (One report estimating wireless messages will jump from 3 billion last December to 244 billion messages in 2004!) Time-Warner's CEO has said publicly that messaging "was the hidden asset I saw in the deal," and one messaging firm told The

Street half of all future e-commerce profits could go to companies behind messaging software. AOL has already announced messaging plans for Motorola and RIM pagers, and one cellphone news site also warns that "You can expect to see AOL's hugely popular instant messenger program on a future Nokia model." AOL also substantially invested in handheld manufacturer Cybiko to produce a wireless AOL access device.

<http://www.zdnet.com/products/stories/reviews/0,4161,2609212,00.html>  
<http://www.mediachannel.org/views/dissector/chairman.shtml>  
<http://www.thestreet.com/tech/internet/972635.html>  
[http://unstrung.com/server/display.php3?id=204&cat\\_id=5](http://unstrung.com/server/display.php3?id=204&cat_id=5)

Last month, as AOL struck a \$120 million deal with Japanese telecommunications giant NTT DoCoMo -- a pioneer in popularizing the delivery of wireless content -- analysts warned Reuters that an inevitable convergence is coming between today's internet services and wireless services of the future. AOL has also struck deals with most of the wireless service providers, including OmniSky, Sprint PCS, BellSouth, and Arch Communications, and AOL executives have even discussed creating their own AOL-branded mobile phone. AOL's spread doesn't end there. One recent press release announced that AOL was "Expanding AOL Convenience To Every Room of the House" by co-developing wireless devices with Gateway. The web address Gateway.Net already points to a CompuServe address owned by AOL. AOL has also struck deals with Palm to use AOL e-mail on Palm devices -- and to offer one-tap access to AOL's Moviefone service from the Palm's "applications" screen.

[http://dailynews.yahoo.com/h/nm/20000926/wr/docomo\\_aol\\_dc\\_1.html](http://dailynews.yahoo.com/h/nm/20000926/wr/docomo_aol_dc_1.html)  
<http://www.tegic.com/Articles/RCR3mar00.htm>  
<http://technews.netscape.com/news/0-1004-200-2670046.html>  
[http://www.allnetdevices.com/industry/news/2000/09/05/omnisky\\_att.html](http://www.allnetdevices.com/industry/news/2000/09/05/omnisky_att.html)  
<http://www.zdnet.com/intweek/stories/news/0,4164,2457813,00.html>  
<http://yahoo.cnet.com/news/0-1006-200-2759379.html>  
<http://portal.compuserve.com/gatewaynet/menu/>

There's no question that the ability to offer movie tickets, plus driving directions from AOL's MapQuest service, will be compelling to mobile consumers. Now regulators worry AOL will create "walled gardens" -- offering users an experience that prevents them from accessing anything that isn't owned by AOL. Users "would have the impression they can find whatever they want," European regulators warned, but at the same time, "AOL's customers could be denied access to the mass content and to content which competes too aggressively with AOL." Jeffrey Chester, the executive director at the Center for Media Education, warned Cox News Services of AOL's ultimate land-grab. "Instead of an Internet where everyone can connect, they want to turn it into a private network where their content will be featured and favored."

<http://www.washingtonpost.com/wp-dyn/articles/A59393-2000Aug31.html>  
<http://www.thenation.com/issue/001009/1009chester.shtml>

If wireless networks become the internet of the future, AOL may get a

second chance to cordon traffic into an online environment where AOL owns everything, deriving revenue from every single transaction and from every single advertisement. A recent article in the Standard reports that AOL already has approximately 40% of the online users in the United States -- and AOL has already announced plans to "extend the AOL experience beyond the PC." This summer Time-Warner's CEO announced that "AOL's future is to get on every platform possible"

[http://199.97.97.16/contWriter/cnd7/2000/06/23/cndin/2526-0003-pat\\_nytimes.htm](http://199.97.97.16/contWriter/cnd7/2000/06/23/cndin/2526-0003-pat_nytimes.htm)

|

<http://thestandard.net/article/display/0,1151,19121,00.html>

<http://www.fiercewireless.com/archives/issue20.htm>

[http://www.zdii.com/industry\\_list.asp?mode=news&doc\\_id=ZD2617919](http://www.zdii.com/industry_list.asp?mode=news&doc_id=ZD2617919)

AOL's remain unapologetic about their control. AOL's vice president of music programming recently described AOL members as a "captured audience," and gloated over the leverage it gave them. AOL's unchangeable welcome screen, displayed to 24 million users when they sign on, "can be used to drive people where we'd like them to go." In August AOL's ownership of the WinAmp software allowed them to eliminate a search engine from the software that might allow users to trade mp3 music files -- including Time-Warner's music. One user says they've already experienced another unpleasant result from AOL's vastly extended software empire. "When I installed AOL software, it installed ICQ, AIM, and tons of other crap."

<http://www.wired.com/news/business/0,1367,39019,00.html>

<http://www.upside.com/News/398f50560.html>

[http://www.upside.com/News/3991d26b0\\_yahoo.html](http://www.upside.com/News/3991d26b0_yahoo.html)

<http://www.zdnet.com/zdnn/stories/news/0,4586,2613807,00.html>

Just how much does AOL plan to grow? They've already registered over 2,572 domains, including eBayAOL.com, Gateway.net, AOL-Verio.com, AOL-Visa.com, and AOLPalm.com. A complete list is online at

[http://www.aol-files.com/articles/legal\\_aoldomains.html](http://www.aol-files.com/articles/legal_aoldomains.html)

including hybrids of familiar company names, like YahAOL.com, AmericaOnlineMS.com, and MSAOL.org. The AOL-owned names raise tantalizing questions about future plans. In December of 1999 AOL acquired Tegic, makers of the T9 text-input software for handheld devices -- but in April, they then registered the domains T9PalmPC.COM and T9PalmPilot.com.

AOL also invested \$200 million in TiVo to incorporate anytime-viewing capability into future offerings from their upcoming TV projects, but mysteriously, AOL -- owners of the ICQ messaging service -- also registered the domains TVICQ.com, TVICQ.net, and TVICQ.org. Meanwhile, Time-Warner has already agreed to purchase 1 million more licenses for self-installation software for cable internet connections.

<http://news.cnet.com/news/0-1004-200-2897084.html>

AOL even registered numerous permutations of the phrase "AOL RR Friends.com" suggesting messaging over Time-Warner's Roadrunner cable

network.

Unintimidated by the FTC and FCC investigations, AOL has also registered the domain YouveGotTimeWarner.com. AOL's also controls household words like Love.com and Helping.com, and their vast empire of online real estate extends even into the world of religion, according to Keith McGrew, the webmaster behind BlackChurchNetwork.com. Recently, he tried to buy the same domain name ending with .org "That's when I discovered it was owned by AOL."

It's not too late to establish boundaries on AOL's reach. European regulators have already blocked one acquisition: Time-Warner's purchase of the music label EMI. The president of the National Association of Record Industry Professionals told Reuters that "I'm very glad the EMI/Warner merger is off. Just imagine if 90 percent of the world's music copyrights were under one roof, which would have been the case had the EMI/Warner deal gone through.

"That's such an imbalance in the marketplace that it's frightening."

<http://biz.yahoo.com/rf/001005/n05632425.html>

But even without music, messaging, or internet access, AOL can still dominate. Consumers Union, the publishers of Consumer Reports, told Reuters that together the companies would control more than half the cable lines in the U.S., and almost half of the most-watched cable channels. One news outlet even reported that 3/4 of time spent watching cable would be spent watching AOL Time-Warner programs. In June Dan Gillmor, a technology columnist for the San Jose Mercury News, described a disturbing example of mis-used control that had already occurred. "Time Warner, quite a conglomerate in its own right, kicked Disney-owned channels -- including the ABC network -- off its cable systems." Consumers Union called it "a brutal lesson in what negotiations look like when one side has the power to pull the plug." Gillmor notes that, though negotiations eventually restored the channels, the incident highlighted the danger of allowing an already powerful Time-Warner to merge with AOL. "Why isn't the Justice Department as interested in this as in Microsoft's treatment of its customers?"

<http://www.consumersunion.org/telecom/cooperdc800.htm>

Gillmor concluded that Steve Case is part of a new breed who want to control not just companies, but entire markets. "When they aggregate enough power -- as they already have in some cases -- they will abuse it. Monopolists do that. They always have, always will." And other technology pundits agree. "Steve Case is reading directly from the Microsoft Monopoly playbook," wrote ZDNet's Jesse Berst in September -- re-iterating his call for legally-enforceable checks on AOL. "The world will be a better place if we all sue America Online," Jesse Berst wrote on ZDNet in March. "As soon as possible." The San Jose Mercury News's columnist isn't swayed by those who say the government shouldn't get involved. "The mantra of competition says it'll all work out for the best. The evidence from the past doesn't support this confidence." Instead, he sees a world where control of the medium will have a real and

profound effect. "Maybe a million Web sites will bloom, but flowers tend to wither when they're hidden from the sunlight." Citing a Reuters story, Gillmor notes elsewhere that AOL "insists that no conditions are necessary to protect consumers. Yeah, right."

<http://www.zdnet.com/anchordesk/stories/story/0,10738,5020169,00.html>  
<http://www.zdnet.com/anchordesk/stories/story/0,10738,2633722,00.html>  
<http://weblog.mercurycenter.com/ejournal/2000/10/08>

43 political cartoons have already appeared on newspaper editorial pages about the potential merger -- and some consumers are already making their voices heard. As Washington D.C. police officers looked on, several prominent activists assembled outside an FCC hearing on the proposed merger with Time-Warner.

<http://biz.yahoo.com/fo/000929/mu3538.html>  
<http://cagle.slate.msn.com/news/aol/>  
<http://www.wired.com/news/politics/0,1283,37840,00.html>  
<http://www.mccullagh.org/image/950-11/fcc-protest-1.html>  
<http://www.mccullagh.org/theme/fcc-aol-protest.html>

Ironically, even share-holders may not want AOL to acquire Time-Warner. The merger was almost de-railed by a shareholders vote in June, according to the Washington Post. (AOL needed 50 percent of the votes, and received just 55 percent.) Today AOL's stock was within \$8 of its one-year low, and a columnist for the Financial Times wrote that the deal "has a dated feel about it now that the bubble in internet stocks has burst... If this deal were to stumble at the next regulatory hurdle, it might turn out to be a blessing in disguise for Time Warner shareholders." But one web columnist and AOL share-holder was cynical when they received their ballot on the merger, interpreting its real message as a kind of gloat. "If there were a chance in hell that you, the unruly individual investor, could stop this deal, it would never have come to a ballot."

[http://www.feedmag.com/daily/dy062100\\_master.html](http://www.feedmag.com/daily/dy062100_master.html)  
<http://www.thestandard.com/newsletters/NLdisplay/0,2936,100-1615,00.html>  
<http://news.ft.com/ft/gx.cgi/ftc?pagename=View&c=Article&cid=FT3907R5TDC&live=>

true

But even now, it's hard to know how far AOL's influence extends, according to the Washington Post. AOL has an 11-member Board of Directors, and the son of one director is also one of the five FCC commissioners voting on the merger! His father has \$13.3 million worth of AOL stock affected by the vote -- and the Post also reports that all five commissioners attended a party at that Director's house in 1997. Where does the control of powerful telecommunications companies end? Noting all the lobbyists approaching the FCC, the Director's son responded to the Washington Post "I think these guys have half the nation hired."

<http://www.washingtonpost.com/wp-dyn/articles/A51362-2000Sep11.html>

What will the world look like if regulators simply rubber-stamp the AOL Time-Warner merger? "You've got Big Brother-like control of an entire



delivery system, including the content..." warns Earthlink's Kurt Rahn, "and that would affect a great number of people. Basically it destroys consumer choice, and makes a mockery of it.

"You can't have a marketplace if there's only one store."

#### THE LAST LAUGH

As sponsors of a popular CBS TV show, AOL found their name in video clips being downloaded from the site.

"Title: Big Brother

Author: America Online, Inc.

To counter concerns about their trustworthiness, AOL has already inserted a professional actress into their television ads who announces, "I trust AOL." But just to play it safe, AOL has also purchased the rights to the domain AOL-lawsuits.com.

**ORIGINAL****EX PARTE OR LATE FILED**

**From:** "A. R. 'Bob' Mascott" <Bob@mascott.eskimo.net>  
**To:** <bkennard@fcc.gov>, <sness@fcc.gov>, <hfurchtg@fcc.gov>, <mpowell@fcc.gov>, <gtristan@fcc.gov>  
**Date:** Sat, Sep 30, 2000 7:22 PM  
**Subject:** AOL-TimeWarner merger

**RECEIVED****OCT 30 2000**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Normally you folks do a pretty good job of representing us little people.

But how in the world can you sleep at night, after you allow two telecommunication giants to rape (yes, rape) any of the American public, which desires to communicate via the Internet.

You will not even make it mandatory for them to open their systems to other Internet Service Providers (ISP). You simply accepted their telling you "yes we will open our systems", without looking into the matter any further. So what happens - they open their system to one other ISP (Juno), so that they can use that as an example of their compliance. However, all of the rest of the ISP's are being charged exorbitant amounts, which either puts them out of business or forces them to pass those exorbitant amounts on to their customers.

The alternative of the above is also cause for AOL-TimeWarner and even AT&T to really be happy. Because they don't want to open their system to competitors, they want the competitor ISP's to be required to open each of their systems to the big boys.

For some reason, you can't seem to understand that the premise, the precedent as well as the policy and procedure you are setting up, is damaging the American people, while allowing gross overcharging to run rampant.

Please, protect us better than you have in this matter and thank you for taking the time to review this message.

206-364-4896

A. R. 'Bob' Mascott

1651 NE 169th Street  
Shoreline, WA 98155-6015No. of Copies rec'd 0  
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**From:** <Dragonphoto@aol.com>  
**To:** <bkennard@fcc.gov>, <sness@fcc.gov>, <hfurchtg@fcc.gov>, <mpowell@fcc.gov>, <gtristan@fcc.gov>  
**Date:** Fri, Sep 22, 2000 7:38 AM  
**Subject:** AOL Time Warner Merger

My name is Charles William DeGrove IV, I have been using AOL for the past seven years. It has been the best Internet service provider I have used. I feel that the merger with Time Warner would just be the icing on the cake. We would have broadband connections, and even better customer service, not to say that AOL has poor customer service, they have excellent service. As a professional photographer I can see the benefits of a faster Internet connection, photographs I have to send would be sent much faster. I live in Jacksonville, FL where AT&T just recently purchased Media One, the only stink that was raised about that merger was Media One's customer service. I feel that the Merger between AOL and Time Warner would do nothing but help the American People. There are still plenty of free Internet service providers out there, and there are still pay services. However, If this merger were to go through I feel that the other Internet service providers would not be hurt by this, if anything it will help breathe new life into what has become a stale race in multimedia information. Thank you for your time in this matter.

DeGrove Photography  
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